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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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James Morrison

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26884 7590 06/17/2009
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EXAMINER

NGUYEN, NGA B

ART UNIT

PAPER NUMBER

3692

MAIL DATE

DELIVERY MODE

06/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

REISSUE APPLICATION_DETAILED ACTION

1. This Office Action is the answer to the Amendment filed on April 28, 2009, which paper has been placed of record in the file.
2. Claims 1-56 are pending in this application.

Response to Arguments/Amendment

3. Applicant's arguments with respect to claims 1-56 have been fully considered but are not persuasive.

In response to the applicant's arguments regarding to claims 22-56, examiner submits that the applicant is no longer allowed to broaden any limitation that was added by amendment or argued to make the patent claims patentable. By arguing that the "determining a second identification code" limitation in the patent prosecution, the applicant has surrendered any claim that lacks that limitation in it's entirety. Thus, the error the applicant is correcting is to remove this very limitation. Therefore, all new claims 22-56 are lacking the limitation and thus are guilty of recapture.

In conclusion, for the reason set forth above, examiner decides to maintain the rejection and make this Office action FINAL.

4. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Rejection 35 U.S.C. 251, Defective Reissue Oath/Declaration

5. The reissue oath/declaration filed with this application is defective (see 37 CFR § § 1.63 and 1.175 and MPEP § 1414) because of the following:

The declaration does not state that "*all errors being corrected in the reissue application up to the time of the filing of the declaration arose without any deceptive intention on the part of the applicant*" (37 CFR 1.75 (a) (2)) or language equivalent thereto.

Claim 1-56 are rejected as being based upon a defective reissue under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defects in the Oath/Declaration is set forth in the discussion above in this Office action

Rejection, 35 U.S.C. 251, Recapture

6. Claims 22-56 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon

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which the present reissue is based. See *Pannu v. Storz Instruments Inc.*, 258 F.3d 1366, 59 USPQ2d 1597 (Fed. Cir. 2001); *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to claim subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope of claim subject matter surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

The applicant is no longer allowed to broaden any limitation that was added by amendment or argued to make the patent claims patentable. By arguing that the “determining a second identification code” limitation in the patent prosecution, the applicant has surrendered any claim that lacks that limitation in it’s entirely. Thus, the error the applicant is correcting is to remove this very limitation. Therefore, all new claims 22-56 are lacking the limitation and thus are guilty of recapture.

Conclusion

7. Claims **1-56** are rejected.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Nga B. Nguyen whose telephone number is (571) 272-6796. The examiner can normally be reached on Monday-Thursday from 9:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-3600.

9. Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

P.O. Box 1450

Alexandria, VA 22313-1450

Or faxed to:

(703) 273-8300 (for formal communication intended for entry),

or

(571) 273-6796 (for informal or draft communication, please label "PROPOSED" or "DRAFT").

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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/Nga B. Nguyen/
Primary Examiner, Art Unit 3692

June 9, 2009